

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

RAW STORY MEDIA, INC., ALTERNET
MEDIA, INC.,

Plaintiffs,

v.

OPENAI, INC., OPENAI GP, LLC,
OPENAI, LLC, OPENAI OPCO LLC,
OPENAI GLOBAL LLC, OAI
CORPORATION, LLC, and OPENAI
HOLDINGS, LLC,

Defendants.

Case No. 1:24-cv-01514-CM-OTW

**DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY
IN SUPPORT OF MOTION TO DISMISS**

Defendants OpenAI, Inc., OpenAI GP, L.L.C., OpenAI, L.L.C., OpenAI OpCo, L.L.C., OpenAI Global, L.L.C., OAI Corporation, L.L.C., and OpenAI Holdings, L.L.C. (collectively, “OpenAI”), by and through counsel, respectfully submit this Notice of Supplemental Authority to apprise the Court of a recent order that further supports OpenAI’s pending Motion to Dismiss (Dkt. 68).

In *Andersen, et al. v. Stability AI Ltd., et al.*, No. 23-cv-00201 (N.D. Cal.), the plaintiffs alleged that several defendants “directly copied [plaintiffs’ works] and used [them] as training data” for artificial intelligence models and that the “training process [for those models] is designed to remove or alter CMI from the training images” in violation of Section 1202(b)(1) of the Digital Millennium Copyright Act (“DMCA”). See First Amended Complaint, *Andersen*, No. 23-cv-00201, Dkt. 129 ¶¶ 245, 300, 367 (attached hereto as Exhibit 1). On August 12, 2024, the United States District Court for the Northern District of California dismissed each of the Section 1202(b)

claims with prejudice. *See* Order Granting in Part and Denying in Part Motions to Dismiss First Amended Complaint, *Andersen*, No. 23-cv-00201, Dkt. 223 at 11–13 & n.13 (attached hereto as Exhibit 2). In so doing, the Court endorsed the defendants’ argument that “there can be no liability for any removal of CMI that occurred during the training process” when “the output images are [] not *identical* to the Training Images,” holding that the Section 1202(b) claims failed “[b]ecause there are no allegations that any output from [the models] was identical to a plaintiff’s work.” *Id.*

Dated: August 22, 2024

Respectfully Submitted,

By: /s/ Elana Nightingale Dawson

LATHAM & WATKINS LLP

Andrew M. Gass (*pro hac vice*)

andrew.gass@lw.com

Joseph R. Wetzel

joseph.wetzel@lw.com

505 Montgomery Street, Suite 2000

San Francisco, CA 94111

Telephone: 415.391.0600

Sarang V. Damle

sy.damle@lw.com

Elana Nightingale Dawson (*pro hac vice*)

elana.nightingaledawson@lw.com

555 Eleventh Street, NW, Suite 1000

Washington, D.C. 20004

Telephone: 202.637.2200

Allison L. Stillman

alli.stillman@lw.com

Luke A. Budiardjo

luke.budiardjo@lw.com

Yijun Zhong

elaine.zhong@lw.com

1271 Avenue of the Americas

New York, NY 10020

Telephone: 212.751.4864

By: /s/ Allyson R. Bennett

MORRISON & FOERSTER LLP

Joseph C. Gratz (*pro hac vice*)

jgratz@mofo.com

Vera Ranieri (*pro hac vice*)

vraniere@mofo.com

Andrew L. Perito (*pro hac vice*)

aperito@mofo.com

425 Market Street

San Francisco, CA 94105

Telephone: 415.268.7522

Allyson R. Bennett (*pro hac vice*)*

abennett@mofo.com

Rose S. Lee (*pro hac vice*)

roselee@mofo.com

707 Wilshire Boulevard, Suite 6000

Los Angeles, CA 90017-3543
Telephone: 213.892.5454

Eric Nikolaides
enikolaides@mofo.com
250 W 55th Street
New York, NY 10019
Telephone: 212.468.8000

By: /s/ Paven Malhotra

KEKER, VAN NEST & PETERS LLP

Robert A. Van Nest (*pro hac vice*)
rvannest@keker.com
Paven Malhotra (*pro hac vice*)*
pmalhotra@keker.com
Michelle S. Ybarra (*pro hac vice*)
mybarra@keker.com
Nicholas S. Goldberg (*pro hac vice*)
ngoldberg@keker.com
Thomas E. Gorman (*pro hac vice*)
tgorman@keker.com
Katie Lynn Joyce (*pro hac vice*)
kjoyce@keker.com
R. James Slaughter (*pro hac vice*)
rslaughter@keker.com
Christopher S. Sun (*pro hac vice*)
csun@keker.com
633 Battery Street
San Francisco, CA 94111-1809
Telephone: 415.391.5400

Attorneys for OpenAI Defendants

* All parties whose electronic signatures are included herein have consented to the filing of this document, as contemplated by Rule 8.5(b) of the Court's ECF Rules and Instructions.